

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1808

H. P. 1588

House of Representatives, January 16, 1980

On Motion of Mr. Davies of Orono referred to the Committee on Public Utilities.
Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk of the House

Presented by Mr. Higgins of Scarborough.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT Relating to Bonds and Notes Issued by Sanitary Districts.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 38 MRSA § 1201, as last amended by PL 1975, c. 461, § 2, is repealed and the following enacted in its place:

§ 1201. Bonds and notes

1. **Authorization of bonds.** Any sanitary district formed under this chapter may provide by resolution of its board of trustees, without district vote, for the borrowing of money and the issuance from time to time of bonds for any of its corporate purposes, including, but not limited to:

A. **Paying and refunding its indebtedness;**

B. **Paying any necessary expenses and liabilities incurred under this chapter, including organizational and other necessary expenses and liabilities, whether incurred by the district or any municipality therein or any person residing in unorganized territory encompassed by the district, the district being authorized to reimburse any municipality therein or any person residing in unorganized territory encompassed by the district for any such expenses incurred or paid by it or him;**

C. **Paying costs directly or indirectly associated with acquiring properties, paying damages, laying sewers, drains and conduits, constructing, maintaining**

and operating sewage and treatment plants, or systems, and making renewals, additions, extensions and improvements to the same, and to cover interest payments during the period of construction and for such period thereafter as the trustees may determine;

D. Providing such reserves for debt service, repairs and replacements or other capital or current expenses as may be required by a trust agreement or resolution securing bonds; and

E. Any combination of these purposes.

Bonds may be issued under this chapter as general obligations of the district or as special obligations payable solely from particular funds. The principal of, premium, if any, and interest on all bonds shall be payable solely from the funds provided for that purpose from revenues. For purposes of this chapter, the term "revenues" means and includes the proceeds of bonds, all revenues, rates, fees, entrance charges, assessments, rents and other receipts derived by the district from the operation of its sewer system and other properties, including, but not limited to, investment earnings and the proceeds of insurance, condemnation, sale or other disposition of properties. All bonds issued by a district under this chapter shall be legal obligations of the district, and all districts formed under this chapter are declared to be quasi-municipal corporations within the meaning of Title 30, section 5053. Bonds may be issued under this chapter without obtaining the consent of any commission, board, bureau or agency of the State or of any municipality encompassed by the district, and without any other proceedings or the happening of other conditions or things other than those proceedings, conditions or things which are specifically required by this chapter. Bonds issued under this chapter do not constitute a debt or liability of the State or of any municipality encompassed by the district or a pledge of the faith and credit of the State or any such municipality, but the bonds shall be payable solely from the funds provided for that purpose, and a statement to that effect shall be recited on the face of the bonds.

2. Notes. Any sanitary district formed under this chapter may also provide by resolution of its board of trustees, without district vote, for the issuance from time to time of notes in anticipation of bonds authorized under this chapter and of notes in anticipation of the revenues to be collected or received in any year or in anticipation of the receipt of federal or state grants or other aid. The issue of these notes shall be governed by the applicable provisions of this chapter relating to the issue of bonds, provided that notes in anticipation of revenue must mature no later than one year from their respective dates and notes issued in anticipation of federal or state grants or other aid and renewals thereof must mature no later than the expected date of receipt of those grants or aid. Notes in anticipation of revenue issued to mature less than one year from their dates may be renewed from time to time by the issue of other notes, provided that the period from the date of an original note to the maturity of any note issued to renew or pay the same or the interest thereon may not exceed one year.

Any such district is authorized and empowered to enter into agreements with the State or the United States, or any agency of either, or any municipality, corporation, commission or board authorized to grant or loan money to or otherwise assist in the financing of projects of the type which that district is authorized to carry out, and to accept grants and borrow money from any such government, agency, municipality, corporation, commission or board as may be necessary or desirable to accomplish the purposes of the district.

3. Maturity; interest; form; temporary bonds. The bonds issued under this chapter shall be dated, shall mature at such time or times not exceeding 40 years from their date or dates and shall bear interest at such rate or rates as may be determined by the board of trustees, and may be made redeemable before maturity, at the option of the district, at such price or prices and under such terms and conditions as may be fixed by the board of trustees prior to the issuance of the bonds. The board of trustees shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. Bonds shall be executed in the name of the district by the manual or facsimile signature of such officer or officers as may be authorized in the resolution to execute the bonds, but at least one signature on each bond shall be a manual signature. Coupons, if any, attached to the bonds shall be executed with the facsimile signature of the officer or officers of the district designated in the resolution. In case any officer, whose signature or a facsimile of whose signature appears on any bonds or coupons, ceases to be such officer before the delivery of the bonds, the signature or its facsimile shall nevertheless be valid and sufficient for all purposes as if he had remained in office until the delivery. Notwithstanding any of the other provisions of this chapter or any recitals in any bonds issued under this chapter, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form, or both, as the board of trustees may determine, and provision may be made for the registration of any coupon bonds as to principal alone and as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board of trustees may sell such bonds in such manner, either at public or private sale, and for such price as they may determine to be for the best interests of the district. The proceeds of the bonds of each issue shall be used solely for the purpose for which those bonds have been authorized, and shall be disbursed in such manner and under such restrictions, if any, as the board of trustees may provide in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds. The resolution providing for the issuance of bonds, and any trust agreement securing the bonds, may contain such limitations upon the issuance of additional bonds as the board of trustees may deem proper, and these additional bonds shall be issued under such restrictions and limitations as may be prescribed by that resolution or trust agreement. Prior to the preparation of definitive bonds, the board of trustees may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds

when those bonds are executed and are available for delivery. The board of trustees may provide for the replacement of any bond which is mutilated, destroyed or lost.

4. Pledges and covenants, trust agreement. In the discretion of the board of trustees of any district, each or any issue of bonds may be secured by a trust agreement by and between the district and a corporate trustee, which may be any trust company within or without the State.

The resolution authorizing the issuance of the bonds or the trust agreement may pledge or assign, in whole or in part, the revenues and other moneys held or to be received by the district and any accounts and contract or other rights to receive the same, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the district, and the proceeds thereof, but shall not convey or mortgage the sewer system or any other properties of the district. The resolution may also contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, but not limited to, covenants setting forth the duties of the district and the board of trustees in relation to the acquisition, construction, reconstruction, improvement, repair, maintenance, operation and insurance of its sewer system or any of its other properties, the fixing and revising of rates, fees and charges, the application of the proceeds of bonds, the custody, safeguarding and application of revenues, defining defaults and providing for remedies in the event thereof which may include the acceleration of maturities, the establishment of reserves and the making and amending of contracts. The resolution or trust agreement may set forth the rights and remedies of the bondholders and of the trustee, if any, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of corporations. In addition, the resolution or trust agreement may contain such other provisions as the board of trustees may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the resolution or trust agreement may be treated as a part of the cost of operation. The pledge by any such resolution or trust agreement shall be valid and binding and shall be deemed continuously perfected for the purposes of the Uniform Commercial Code from the time when the pledge is made. All revenues, moneys, rights and proceeds so pledged and thereafter received by the district shall immediately be subject to the lien of the pledge without any physical delivery or segregation thereof or further action under the Uniform Commercial Code or otherwise, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the district irrespective of whether those parties have notice thereof.

The resolution authorizing the issuance of bonds under this chapter, or any trust agreement securing those bonds, may provide that all or a sufficient amount of revenues, after providing for the payment of the cost of repair, maintenance and operation and reserves therefor as may be provided in the resolution or trust agreement, shall be set aside at such regular intervals as may be provided in the resolution or trust agreement and deposited in the credit of a fund for the payment

of the interest on and the principal of bonds issued under this chapter as the same shall become due, and the redemption price or purchase price of bonds retired by call or purchase. The use and disposition of moneys to the credit of the fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds and, except as may otherwise be provided in the resolution or trust agreement, the fund shall be a fund for the benefit of all bonds without distinction or priority of one over another.

5. Trust funds. Notwithstanding any other law, all moneys received pursuant to the authority of this chapter shall be deemed to be trust funds, to be held and applied solely as provided in this chapter. The resolution authorizing the issuance of bonds or the trust agreement securing the bonds shall provide that any officer to whom, or bank, trust company or other fiscal agent to which, those moneys shall be paid shall act as trustee of those moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as may be provided in the resolution or trust agreement or as may be required by this chapter.

6. Remedies. Any holder of bonds issued under this chapter or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights given may be restricted by the resolution authorizing the issuance of those bonds or trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, including proceedings for the appointment of a receiver to take possession and control of the properties of the district, protect and enforce any and all rights under the laws of the State or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this chapter or by such resolution or trust agreement to be performed by the district or by any officer thereof, including the fixing, charging and collecting of rates, fees and charges for the use of or for the services and facilities furnished by the district.

7. Refunding bonds. Any sanitary district formed under this chapter by resolution of its board of trustees, without district vote, may issue refunding bonds for the purpose of paying any of its bonds at maturity or upon acceleration or redemption. The refunding bonds may be issued at such time prior to the maturity or redemption of the refunded bonds as the board of trustees deems to be in the public interest. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issue of the refunding bonds, the expenses of redeeming the bonds being refunded and such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be required by a trust agreement or resolution securing bonds. The issue of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties and obligations of the district in respect of the same shall be governed by the applicable provisions of this chapter relating to the issue of bonds other than refunding bonds.

8. Tax exemption. All bonds, notes or other evidences of indebtedness issued under this chapter, and their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation within the State.

9. Bonds declared legal investments. Bonds and notes issued by any district under this chapter are made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies and associations and other persons carrying on an insurance business, trust companies, banks, bankers, banking associations, savings banks and savings associations, including savings and loan associations, credit unions, building and loan associations, investment companies, executors, administrators, trustees and other fiduciaries, pension, profit-sharing, retirement funds and other persons carrying on a banking business, and all other persons who are now or may hereafter be, authorized to invest in bonds or other obligations of the State, may properly and legally invest funds, including capital in their control or belonging to them. The bonds and notes are made securities which may properly and legally be deposited with and received by any state, municipal or public officer, or any agency or political subdivision of the State, for any purpose for which the deposit of bonds or other obligations of the State is now or may hereafter be authorized by law.

Sec. 2. 38 MRSA § 1202, 4th ¶, as enacted by PL 1965, c. 310, is repealed and the following enacted in its place:

The sewer rates, tolls, rents, entrance charges, assessments and other lawful charges established by the board of trustees in accordance with this chapter shall be so fixed and adjusted in respect of the aggregate thereof so as to produce revenue at least sufficient, together with any other moneys available therefor, to:

Sec. 3. 38 MRSA § 1202, sub-§§ 1-4, as enacted by PL 1965, c. 310, are repealed and the following enacted in their place:

1. Current operating expenses. Pay the current expenses of operating and maintaining the sewerage, drainage and treatment system of the district;

2. Payment of interest and principal. Pay the principal of, premium, if any, and interest on all bonds and notes issued by the district under this chapter as the same become due and payable;

3. Sinking fund for retirement of obligations. Create and maintain such reserves as may be required by any trust agreement or resolution securing bonds and notes;

4. Repairs, replacements and renewals. Provide funds for paying the cost of all necessary repairs, replacements and renewals of the sewerage, drainage and treatment systems of the district; and

Sec. 4. 38 MRSA § 1202, sub-§ 5 is enacted to read:

5. Payment of obligations. Pay or provide for any and all amounts which the

district may be obligated to pay or provide for by law or contract, including any resolution or contract with or for the benefit of the holders of its bonds and notes.

STATEMENT OF FACT

This bill is intended to strengthen the rights of holders of bonds or notes of a sanitary district, increase the security of the bonds, assure sufficient revenue to pay all debt service charges of a sanitary district, and provide flexibility with respect to the nature of the securities offered by a sanitary district. These changes will make the bonds and notes of a sanitary district more attractive and sound purchases for potential investors.